

## SENATE BILL No. 244

### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-12-1-7; IC 5-11-20; IC 31-37-19-5; IC 35-41-1-12; IC 35-50-5-3.

**Synopsis:** Annual review of unpaid restitution orders. Requires a governmental entity that is the beneficiary of a criminal or juvenile restitution order issued by a state or federal court to annually file a payment status report with the state board of accounts. Provides that the report must include information on the status of the restitution order, including, if applicable, information concerning any arrearage. Requires the state board of accounts to review the status of restitution orders when it conducts an audit of a governmental entity. Specifies that a court that issues a restitution order on behalf of a political subdivision must serve a copy of the restitution order on the fiscal officer of the political subdivision, and that a court that issues a restitution order on behalf of the state must serve a copy of the order on the attorney general and the auditor of state. Requires the issuing court to facilitate enforcement of a restitution order.

**Effective:** July 1, 2007.

**Mrvan**

January 8, 2007, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## SENATE BILL No. 244

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 4-12-1-7 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) On or before the first day of  
3 September, in any year that the budget director makes a request under  
4 this chapter, each and every state agency shall prepare and file with the  
5 budget agency on forms designated by it a written statement, showing  
6 in detail the following:
- 7 (1) The several amounts actually expended for the administration,  
8 operation, maintenance and support of such state agency for at  
9 least the two (2) fiscal years which ended immediately preceding  
10 such first day of September, and the several amounts estimated by  
11 such state agency to be actually expended for the fiscal year to  
12 end on June 30 following the next regular session of the general  
13 assembly; and the actual and estimated income of such state  
14 agency for like periods.
- 15 (2) An estimate of the necessary expenditures of such state  
16 agency for the proposed budget period as specified in the budget  
17 director's request beginning on the first day of July of the calendar

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year next succeeding the filing of such statement; such estimates or requests for appropriations to defray the estimated expenditures of such department shall be set forth separately for each fiscal year; and the estimated income of such state agency for like period.

(3) A written statement showing concisely the reasons for all estimated expenditures and requests for appropriations contemplated in the preceding subdivision (2), showing particularly the reason for any requested increase or decrease over former appropriations.

(4) Proposals for expenditures for new projects, special purposes or objects, construction, additions, building, improvements, undertakings or expansion of the work of any state agency requiring additional expenditures and capital outlays.

(5) Any other information related to the subject matter of the preceding subdivisions of this subsection (a), or otherwise required to effect the purposes of this chapter, **including the existence of an unpaid restitution order**, to the extent the budget agency or budget committee deems such information necessary or required, including when requested, citations to any statutes regulating, governing or providing for continuing annual appropriations, fees or other sources of income.

(b) The budget agency shall examine such written statements and review and analyze all of the information, data, estimates, requests for appropriations and for other authorizations to spend state funds as the several state agencies have prepared and filed them. As promptly as possible the budget agency shall complete its examination, review and analysis and shall prepare recommendations for a budget report, and from time to time shall submit these to the budget committee for its consideration at one (1) of its meetings.

SECTION 2. IC 5-11-20 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

**Chapter 20. Restitution Orders**

**Sec. 1. As used in this chapter, "governmental entity" means:**

- (1) a state agency; or
- (2) a political subdivision.

**Sec. 2. As used in this chapter, "political subdivision" has the meaning set forth in IC 36-1-2-13.**

**Sec. 3. As used in this chapter, "state agency" has the meaning set forth in IC 4-13-1-1.**

**Sec. 4. (a) A governmental entity shall record on a supplemental**

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1 schedule any unpaid restitution order of which the governmental  
2 entity is the beneficiary.

3 (b) A political subdivision shall:

4 (1) attach a supplemental schedule prepared under subsection

5 (a) to its budget; and

6 (2) submit the supplemental schedule to:

7 (A) the department of local government finance; and

8 (B) the county auditor;

9 at the same time that the political subdivision submits its  
10 budget to the department of local government finance and the  
11 county auditor for review.

12 (c) A state agency shall submit a supplemental schedule  
13 prepared under subsection (a) to the budget agency in accordance  
14 with IC 4-12-1-7.

15 Sec. 5. A governmental entity that is the beneficiary of a  
16 restitution order issued by a state or federal court in a criminal or  
17 juvenile proceeding shall annually file a payment status report  
18 concerning the restitution order with the state board of accounts.

19 Sec. 6. A payment status report filed under section 5 of this  
20 chapter must include the following:

21 (1) A copy of the restitution order.

22 (2) The amount of restitution ordered.

23 (3) The amount of restitution that is unpaid.

24 (4) The name of the person ordered to pay the restitution.

25 (5) The governmental entity entitled to receive the restitution.

26 (6) A statement regarding whether the person ordered to pay  
27 restitution has met the person's obligations under the  
28 restitution order in a timely manner.

29 (7) If the restitution order is in arrears, the amount of the  
30 arrearage.

31 (8) Any other information relevant to the restitution order.

32 Sec. 7. If the state board of accounts performs an audit of a  
33 governmental entity that is the beneficiary of a restitution order  
34 issued by a state or federal court in a criminal or juvenile  
35 proceeding, the state board of accounts shall review the status of  
36 the restitution order as part of its audit.

37 SECTION 3. IC 31-37-19-5, AS AMENDED BY P.L.140-2006,  
38 SECTION 19, AS AMENDED BY P.L.173-2006, SECTION 19, AND  
39 AS AMENDED BY P.L.145-2006, SECTION 346, IS CORRECTED  
40 AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
41 2007]: Sec. 5. (a) This section applies if a child is a delinquent child  
42 under IC 31-37-1.

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(b) The juvenile court may, in addition to an order under section 6 of this chapter, enter at least one (1) of the following dispositional decrees:

(1) Order supervision of the child by:

(A) the probation department; ~~or~~

(B) the county office; ~~of family and children; or~~

(C) the department.

As a condition of probation under this subdivision, the juvenile court shall after a determination under ~~IC 5-2-12-4~~ IC 11-8-8-5 require a child who is adjudicated a delinquent child for an act that would be an offense described in ~~IC 5-2-12-4~~ IC 11-8-8-5 if committed by an adult to register with the ~~sheriff (or the police chief of a consolidated city)~~ local law enforcement authority under ~~IC 5-2-12~~ IC 11-8-8.

(2) Order the child to receive outpatient treatment:

(A) at a social service agency or a psychological, a psychiatric, a medical, or an educational facility; or

(B) from an individual practitioner.

(3) Order the child to surrender the child's driver's license to the court for a specified period of time.

(4) Order the child to pay restitution if the victim provides reasonable evidence of the victim's loss, which the child may challenge at the dispositional hearing.

(5) Partially or completely emancipate the child under section 27 of this chapter.

(6) Order the child to attend an alcohol and drug services program established under IC 12-23-14.

(7) Order the child to perform community restitution or service for a specified period of time.

(8) Order wardship of the child as provided in section 9 of this chapter.

**(c) If a child is subject to a restitution order of which a governmental entity (as defined in IC 5-11-20-1) is the beneficiary, and if the governmental entity shows that the child has failed to comply with the restitution order, the court shall, on motion of the governmental entity, do one (1) or more of the following:**

**(1) Issue an order to show cause.**

**(2) After a hearing, upon finding that the child has knowingly or intentionally failed to comply with the restitution order, find the child to be in contempt of court.**

**(3) Take any other judicial action to facilitate compliance with the restitution order.**

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1 SECTION 4. IC 35-41-1-12 IS AMENDED TO READ AS  
 2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12. (a) "Governmental  
 3 entity" means:

4 (1) the United States or any state, county, township, city, town,  
 5 separate municipal corporation, special taxing district, or public  
 6 school corporation;

7 (2) any authority, board, bureau, commission, committee,  
 8 department, division, hospital, military body, or other  
 9 instrumentality of any of those entities; or

10 (3) a state-assisted college or state-assisted university.

11 **(b) The definition set forth in this section does not apply to**  
 12 **IC 35-50-5-3(i).**

13 SECTION 5. IC 35-50-5-3, AS AMENDED BY P.L.173-2006,  
 14 SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 15 JULY 1, 2007]: Sec. 3. (a) Except as provided in subsection (i) or (j),  
 16 in addition to any sentence imposed under this article for a felony or  
 17 misdemeanor, the court may, as a condition of probation or without  
 18 placing the person on probation, order the person to make restitution  
 19 to the victim of the crime, the victim's estate, or the family of a victim  
 20 who is deceased. The court shall base its restitution order upon a  
 21 consideration of:

22 (1) property damages of the victim incurred as a result of the  
 23 crime, based on the actual cost of repair (or replacement if repair  
 24 is inappropriate);

25 (2) medical and hospital costs incurred by the victim (before the  
 26 date of sentencing) as a result of the crime;

27 (3) the cost of medical laboratory tests to determine if the crime  
 28 has caused the victim to contract a disease or other medical  
 29 condition;

30 (4) earnings lost by the victim (before the date of sentencing) as  
 31 a result of the crime including earnings lost while the victim was  
 32 hospitalized or participating in the investigation or trial of the  
 33 crime; and

34 (5) funeral, burial, or cremation costs incurred by the family or  
 35 estate of a homicide victim as a result of the crime.

36 (b) A restitution order under subsection (a), or (i), or (j) is a  
 37 judgment lien that:

38 (1) attaches to the property of the person subject to the order;

39 (2) may be perfected;

40 (3) may be enforced to satisfy any payment that is delinquent  
 41 under the restitution order by the person in whose favor the order  
 42 is issued or the person's assignee; and

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(4) expires;  
in the same manner as a judgment lien created in a civil proceeding.

(c) When a restitution order is issued under subsection (a), the issuing court may order the person to pay the restitution, or part of the restitution, directly to:

- (1) the victim services division of the Indiana criminal justice institute in an amount not exceeding:
  - (A) the amount of the award, if any, paid to the victim under IC 5-2-6.1; and
  - (B) the cost of the reimbursements, if any, for emergency services provided to the victim under IC 16-10-1.5 (before its repeal) or IC 16-21-8; or
- (2) a probation department that shall forward restitution or part of restitution to:
  - (A) a victim of a crime;
  - (B) a victim's estate; or
  - (C) the family of a victim who is deceased.

The victim services division of the Indiana criminal justice institute shall deposit the restitution it receives under this subsection in the violent crime victims compensation fund established by IC 5-2-6.1-40.

(d) When a restitution order is issued under subsection (a), (i), or (j), the issuing court shall send a certified copy of the order to the clerk of the circuit court in the county where the felony or misdemeanor charge was filed. The restitution order must include the following information:

- (1) The name and address of the person that is to receive the restitution.
- (2) The amount of restitution the person is to receive.

Upon receiving the order, the clerk shall enter and index the order in the circuit court judgment docket in the manner prescribed by IC 33-32-3-2. The clerk shall also notify the department of insurance of an order of restitution under subsection (i).

(e) An order of restitution under subsection (a), (i), or (j), does not bar a civil action for:

- (1) damages that the court did not require the person to pay to the victim under the restitution order but arise from an injury or property damage that is the basis of restitution ordered by the court; and
- (2) other damages suffered by the victim.

(f) Regardless of whether restitution is required under subsection (a) as a condition of probation or other sentence, the restitution order is not discharged by the completion of any probationary period or other sentence imposed for a felony or misdemeanor.

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(g) A restitution order under subsection (a), (i), or (j), is not discharged by the liquidation of a person's estate by a receiver under IC 32-30-5 (or IC 34-48-1, IC 34-48-4, IC 34-48-5, IC 34-48-6, IC 34-1-12, or IC 34-2-7 before their repeal).

(h) The attorney general may pursue restitution ordered by the court under subsections (a) and (c) on behalf of the victim services division of the Indiana criminal justice institute established under IC 5-2-6-8.

(i) The court may order the person convicted of an offense under IC 35-43-9 to make restitution to the victim of the crime. The court shall base its restitution order upon a consideration of the amount of money that the convicted person converted, misappropriated, or received, or for which the convicted person conspired. The restitution order issued for a violation of IC 35-43-9 must comply with subsections (b), (d), (e), and (g), and is not discharged by the completion of any probationary period or other sentence imposed for a violation of IC 35-43-9.

(j) The court may order the person convicted of an offense under IC 35-43-5-3.5 to make restitution to the victim of the crime, the victim's estate, or the family of a victim who is deceased. The court shall base its restitution order upon a consideration of the amount of fraud or harm caused by the convicted person and any reasonable expenses (including lost wages) incurred by the victim in correcting the victim's credit report and addressing any other issues caused by the commission of the offense under IC 35-43-5-3.5. If, after a person is sentenced for an offense under IC 35-43-5-3.5, a victim, a victim's estate, or the family of a victim discovers or incurs additional expenses that result from the convicted person's commission of the offense under IC 35-43-5-3.5, the court may issue one (1) or more restitution orders to require the convicted person to make restitution, even if the court issued a restitution order at the time of sentencing. For purposes of entering a restitution order after sentencing, a court has continuing jurisdiction over a person convicted of an offense under IC 35-43-5-3.5 for five (5) years after the date of sentencing. Each restitution order issued for a violation of IC 35-43-5-3.5 must comply with subsections (b), (d), (e), and (g), and is not discharged by the completion of any probationary period or other sentence imposed for an offense under IC 35-43-5-3.5.

(k) The court shall order a person convicted of an offense under IC 35-42-3.5 to make restitution to the victim of the crime in an amount equal to the greater of the following:

- (1) The gross income or value to the person of the victim's labor or services.

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(2) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of:

(A) the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-209); or

(B) IC 22-2-2 (Minimum Wage);  
whichever is greater.

**(l) If a person is subject to a restitution order of which a governmental entity (as defined in IC 5-11-20-1) is the beneficiary, and if the governmental entity shows that the person has failed to comply with the restitution order, the court shall, on motion of the governmental entity, do one (1) or more of the following:**

**(1) Issue an order to show cause.**

**(2) After a hearing, upon finding that the person has knowingly or intentionally failed to comply with the restitution order, find the person to be in contempt of court.**

**(3) Take any other judicial action to facilitate compliance with the restitution order.**

**(m) If a court issues a restitution order under this section on behalf of a political subdivision, the prosecuting attorney shall send a copy of the restitution order to the fiscal officer of the political subdivision. If the court issues a restitution order under this section on behalf of the state, the prosecuting attorney shall send a copy of the restitution order to the attorney general and to the auditor of state.**

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